

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
TERRY CRABTREE, JUDGE

DIVISION III

NEALEETA HARRIS

CA 05-1121

May 10, 2006

APPELLANT

APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION
[F403480]

V.

WAL-MART STORES, INC., EMPLOYER
CLAIMS MANAGEMENT, INC., CARRIER
APPELLEES

AFFIRMED

By order dated August 18, 2005, the Workers' Compensation Commission affirmed and adopted the opinion of the Administrative Law Judge (ALJ) finding that appellant failed to prove by a preponderance of the evidence that a compensable injury to her low back was established by medical evidence supported by objective findings. On appeal appellant asserts that the Commission's decision was not supported by substantial evidence. She contends there was medical evidence supported by objective findings that prove she sustained an injury to her lower back when she fell at work. Appellees do not dispute the fact that appellant fell at work and suffered a compensable injury to her head, but they maintain that there are not objective findings proving appellant suffered an injury to her lower back during her accident. It is their position that appellant's back problems preexisted her incident at work. We agree with appellees and affirm.

Appellant was working at a Wal-Mart in Hot Springs, Arkansas, on March 13, 2004, when she slipped on a grape and fell between two cash registers. She hit her head and landed on the floor. Her coworkers called an ambulance, and she was taken to the emergency room

at St. Joseph's Mercy Health Center. Appellant was examined by Dr. Mark Larey. She complained of pain in her right hip and lower back, and she had a "knot" on her head. Dr. Larey diagnosed appellant with contusions and lumbar strain secondary to her fall, and also with a head contusion. Dr. Larey did not observe a contusion on appellant's hip; rather, he diagnosed the hip contusion and strain based on appellant's complaints of pain. An x-ray taken of appellant's lower back during her emergency room examination showed degenerative changes in her lumbar spine but did not reflect any fractures or focal erosion. The x-rays of appellant's cervical spine and hip were described by Dr. Larey as unremarkable.

Three days later, appellant was examined by Dr. Michael Atta at St. Joseph's Business Health Clinic. Dr. Atta's report reflects that the "knot" on appellant's head had resolved, that the range of motion at the cervical spine was full in all directions, and that there was only mild tenderness over appellant's paralumbar musculature. Dr. Atta reported that appellant suffered from a lumbar and right hip contusion with lumbar strain, and he released her to return to work after two days with the restriction that she perform seated work only. However, in a letter dated June 29, 2004, Dr. Atta reported that his diagnosis of a lumbar contusion was made based on Ms. Harris's description of her injury, and that no redness, swelling or bruising in her back was seen.

Appellant worked one day, and then she returned to Dr. Atta complaining that her back pain worsened with prolonged standing and sitting. Once again, after examining appellant, Dr. Atta noted that there was only "very mild tenderness over the right paralumbar musculature." He also noted that he did not observe muscle spasms. Although Dr. Atta kept appellant from working the rest of the day, he released her with the same restrictions to return to work the next day. Appellant returned to Dr. Atta on March 23, 2004, and on that date he

reported only mild tenderness and that there were no areas of redness, swelling or ecchymosis. Due to appellant's continued complaints, Dr. Atta referred her for an MRI of the lumbar spine. Although released to return to work with the same restrictions, appellant did not immediately return.

An MRI was performed on April 2, 2004, and it showed degenerative disc changes and facet joint hypertrophy at L4-L5 and L5-S1, and it also showed a "probable" posterior inlet tear in the foraminal portion of the L4-L5 disc and asymmetric bulging of the L5-S1 disc. Appellant was referred to an orthopedic surgeon, Dr. Bruce Smith, and she was examined by him on April 14, 2004. Dr. Smith reported that the MRI showed degenerative disc changes but no acute disc rupture; therefore, he recommended physical therapy. Appellant testified at the hearing that the physical therapy helped, and she was released to return to work without restrictions on May 3, 2004. She worked two weeks and then returned to Dr. Smith on June 2, 2004, complaining of back pain. Dr. Smith referred appellant to a neurosurgeon, Dr. James Arthur. Dr. Arthur performed lumbar epidural steroid injections on June 23, 2004, and again on July 14, 2004. Appellant has not returned to work since June 2, 2004.

In addition to the medical evidence introduced at the hearing, there was also testimony from Michael Joe Davis, a private investigator hired by appellees to perform surveillance on appellant. Mr. Davis testified that he witnessed appellant taking extended walks, climbing steep terrain and stairs, and bending over to pick up objects without any signs of distress. Appellant was also observed running errands and engaging in normal daily activities. Appellees introduced two video recordings made by Mr. Davis into evidence, and they were viewed at the hearing

Arkansas Code Annotated section 11-9-102(5)(d) (Supp. 1999) requires that a

compensable injury be established by medical evidence supported by objective findings as described by section 11-9-102(16). Objective findings are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(I). After reviewing the medical evidence and considering the testimony, the ALJ, and the Commission by function of affirming and adopting the ALJ's opinion, found that appellant's back injury was not compensable, because it was not established by medical evidence supported by objective findings.

When a claim is denied because the claimant has failed to show an entitlement to compensation by a preponderance of the evidence, the substantial-evidence standard of review requires us to affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Clardy v. Medi-Homes LTC Serv. LLC*, 75 Ark. App. 156, 55 S.W.3d 791 (2001). The court will not reverse the Commission's decision unless it is convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Searcy Indus. Laundry v. Ferren*, 82 Ark. App. 69, 110 S.W.3d 306 (2003). It is the function of the Commission to determine the credibility of witnesses and the weight to be given their testimony. *Id.* It is the Commission's duty to weigh medical evidence and, if the evidence is conflicting, its resolution is a question of fact for the Commission. *Id.*

The record reflects that Dr. Smith's review of the MRI concludes that it showed degenerative disc changes but no acute disc rupture. Letters from Drs. Larey and Atta clarified that the diagnosis of lumbar strain and hip contusion were based on appellant's description of her injury and her complaints of pain. Clearly these are subjective findings under appellant's control rather than the objective findings required by statute. Because the Commission's opinion displays a substantial basis for the denial of benefits, we affirm.

Affirmed.

BIRD and GLOVER, JJ., agree.